

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4405 of 2007()

**CMP.7556/2007 of ADDL. SESSIONS COURT (ADHOC), TRIVANDRUM
CC.859/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III,
NEYYATTINKARA**

REVN. PETITIONER: 2ND ACCUSED

**STEPHEN, S/O. PONNAYYAN NADAR,
KAMALA COTTAGE, THUDALY, MYLACHAL DESOM,
KEEZHANNOOR VILLAGE, NEYYATTINKARA.**

BY ADV. SRI.G.SUDHEER

RESPONDENTS: COMPLAINANT

**STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

V. RAMKUMAR, J.

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Crl.R.P.No.4405 of 2007

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Dated this the 10th day of December, 2007

ORDER

The revision petitioner was prosecuted by the Sub Inspector of Police, Vellarada for offences punishable under Section 451,323,341 and 506(ii) IPC. The de facto complainant is none other than the elder brother of the revision petitioner.

2. Originally the trial court after trial convicted the revision petitioner of the offences punishable under Sections 451, 323 and 506(ii) IPC and acquitted him of the offence under Section 341 IPC. Aggrieved by the conviction and sentence, the revision petitioner preferred Crl.A.No.483 of 1999 before the Additional District & Sessions Judge, Fast Track Court- I, Thiruvananthapuram. As per judgment dated 29.06.06, the Additional Sessions Judge, Thiruvananthapuram set aside the judgment of the trial court and remanded the case back to the trial court for fresh disposal according to law after giving a reasonable opportunity to the revision petitioner accused to cross-examine PW3 on payment of costs and after giving the prosecution an opportunity to examine the Investigating Officer.

After the remand, the revision petitioner filed two petitions before the trial court. C.M.P.No.5355 of 2007 was filed under Section 315 Cr.P.C. offering himself to be examined as defence witness and seeking permission to do so. He also filed the present application namely C.M.P.No.7556 of 2007 to reopen the evidence, so as to mark documents and thereby strengthen his contention that the house where he had allegedly trespassed really belongs to him. Both the petitions were dismissed. As against the dismissal of C.M.P.No.5355 of 2007, the petitioner has no grievance. He is aggrieved only by dismissal of C.M.P.No.7566 of 2007.

3. I heard the learned counsel appearing for the revision petitioner and the learned Public Prosecutor.

4. The trial court was giving too narrow a construction to the direction in the remand order passed by the lower appellate court. Technically viewed, the remand order could be said to confine only to recalling PW3 and cross examining him and allowing the prosecution to examine the Investigating Officer. But in the remand order itself it is stated that the case is remanded to the court below for disposal in accordance with law.

In any view of the matter, the trial court should not have shut out evidence which the revision petitioner wanted to adduce.

5. Accordingly, the order dated 29.11.2007 in C.M.P.No.7556 of 2007 in C.C.No.859 of 1996 on the file of JFCM-III, Neyyattinkara is set aside and the said C.M.P. will stand allowed. The trial court shall also consider the Additional witness, if any, sought to be examined by the defence and pass orders according to law and thereafter dispose of C.C.No.859 of 1996 in accordance with law, expeditiously and at any rate, within a period of one month on receipt of a copy of this order. The revision petitioner shall appear before the court below without any further notice on 3.1.08.

V. RAMKUMAR, JUDGE

sj

/True Copy/

P.A To Judge